

1 PAUL BASHKIN
2 P.O. Box 881946
3 San Diego, California 92168
4 (619) 230-1133

5 Plaintiff, in pro per

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 PAUL BASHKIN,

12 Plaintiff,

13 v.

14 SAN DIEGO COUNTY; HOWARD
15 KLUGE, individually and in his official
16 capacity; BRET GARRETT, individually
and in his official capacity; and DOES 1
through 100, inclusive,

17 Defendants.

18 CASE NO.

19 COMPLAINT FOR DAMAGES:

- 20 (1) DEPRIVATION OF RIGHTS
[42 U.S.C. § 1983]; and
21 (2) CONSPIRACY TO INTERFERE
WITH CIVIL RIGHTS
[42 U.S.C. § 1985]

22 [DEMAND FOR JURY TRIAL]

23
24 Plaintiff, PAUL BASHKIN, alleges as follows:

25 JURISDICTIONAL BASIS FOR COMPLAINT

26 1. Plaintiff brings this suit pursuant to 42 U.S.C. §§ 1983 and 1985 for violations of
27 certain protections guaranteed him by the Fourth and Fourteenth Amendments to the United States
28 Constitution, committed by each of the defendants acting under color of California law. Defendants
HOWARD KLUGE and BRET GARRETT are sheriff's deputies who are being sued in both their
personal and official capacities.

INTRODUCTORY ALLEGATIONS

2. Plaintiff PAUL BASHKIN ("PLAINTIFF") is, and at all times herein mentioned was, a resident of the State of California, residing in San Diego County.

3. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants HOWARD KLUGE ("KLUGE") and BRET GARRETT ("GARRETT") were residents of, and/or doing business in, San Diego County.

4. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, Defendant SAN DIEGO COUNTY was doing business in San Diego County.

5. PLAINTIFF is unaware of the true names and identities of the defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said defendants under such fictitious names and will seek leave of the Court to amend this Complaint to show their true names when the same have been ascertained. DOES 1 through 10 were non-tribal members employed by Barona Resort & Casino ("Barona") who conspired with defendants KLUGE and GARRETT to deprive PLAINTIFF of his civil rights, as set forth hereinbelow.

FIRST CAUSE OF ACTION

DEPRIVATION OF RIGHTS [42 U.S.C. § 1983]

(As To All Defendants)

6. PLAINTIFF realleges and incorporates by reference, paragraphs 1 through 5, inclusive, as though fully set forth herein.

7. On August 8, 2006, Deputies KLUGE and GARRETT, responded to a California Welfare & Institutions Code § 5150 ("§ 5150") call from Barona management with regard to PLAINTIFF.

8. After questioning PLAINTIFF, Deputy KLUGE decided not to have PLAINTIFF involuntarily committed on a § 5150 hold. PLAINTIFF was not arrested and was informed that he was free to go. All violations hereinafter alleged occurred subsequent to these decisions.

1 9. PLAINTIFF then informed Barona that although he did not intend to gamble there
2 anymore, he had decided not to 'self-ban' from the casino in order to preserve the substantial player's
3 club benefits he had already earned (e.g., free daily buffets, bonus cash, etc.). During subsequent
4 negotiations between PLAINTIFF and Barona, Deputy KLUGE interfered with PLAINTIFF's
5 attempts to protect and preserve his contractual player's club rights. Without provocation, Deputy
6 KLUGE began verbally harassing PLAINTIFF and shouting at him, informing PLAINTIFF, among
7 others, that he had "no rights" and that Barona could do whatever it wanted to him.

8 10. Deputy KLUGE then forced PLAINTIFF from the Barona interrogation room to an
9 adjacent parking lot where the deputy's car was parked by pinning PLAINTIFF's wrists behind his
10 back, which was excruciatingly painful and left bruises. En route, PLAINTIFF asked Deputy
11 KLUGE to let go of his wrists because he was hurting him. Deputy KLUGE refused, telling
12 PLAINTIFF to "shut up."

13 11. When they arrived at Deputy KLUGE's squad car, PLAINTIFF advised the deputy
14 that he had a claim check to retrieve his backpack in his right front pocket. Deputy KLUGE would
15 not let PLAINTIFF get it. Instead, Deputy KLUGE handcuffed PLAINTIFF, which was also very
16 painful and done over his protestations, while Deputy KLUGE searched each of PLAINTIFF's
17 pockets without his consent.

18 12. When Deputy KLUGE found PLAINTIFF's wallet in his back pocket, Deputy
19 KLUGE began rummaging through it, commenting on its contents. Eventually, Deputy KLUGE
20 pulled the claim check out of PLAINTIFF's right front pocket and ordered PLAINTIFF to walk
21 around to the casino entrance where the buses departed, informing PLAINTIFF that his backpack
22 would be waiting for him when he got there.

23 13. Deputy KLUGE then removed the handcuffs while threatening to charge PLAINTIFF
24 with criminal trespassing if PLAINTIFF did not leave on the next bus. Scared to death, PLAINTIFF
25 did exactly as he was told.

26 14. Deputy GARRETT was present during this ordeal, yet did not attempt to stop Deputy
27 KLUGE from committing the acts complained about herein, despite having the knowledge,
28 opportunity and duty to do so.

1 15. Deputies KLUGE and GARRETT failed to: (a) document this incident; (b) report it
2 to their superiors; or (c) file any incident report with the SAN DIEGO COUNTY Sheriff's
3 Department, in order to conceal their misconduct.

4 16. Deputy KLUGE's actions and Deputy GARRETT's inaction, violated PLAINTIFF's
5 constitutional rights. They violated PLAINTIFF's 4th Amendment rights by, among others: (a)
6 subjecting PLAINTIFF to an unlawful and unreasonable search and seizure without probable cause;
7 and (b) using excessive force and unlawful restraint against PLAINTIFF absent probable cause. In
8 fact, once Deputy KLUGE determined not to have PLAINTIFF committed on a § 5150 hold, Deputy
9 KLUGE had no right to search or seize PLAINTIFF's person or property and no right to use any
10 force or restraint against PLAINTIFF.

11 17. Deputies KLUGE and GARRETT also violated PLAINTIFF's 14th Amendment rights
12 by depriving PLAINTIFF of liberty without due process when Deputy KLUGE unlawfully restrained
13 PLAINTIFF. In fact, once Deputy KLUGE determined not to have PLAINTIFF committed on a §
14 5150 hold, Deputy KLUGE had no right to detain PLAINTIFF, much less falsely arrest, kidnap or
15 imprison him, which is what the deputy effectively did.

16 18. Defendant SAN DIEGO COUNTY either maintained a policy that allowed its sheriff's
17 deputies, including Deputies KLUGE and GARRETT, to engage in the lawlessness set forth above,
18 or acted recklessly, intentionally or with gross negligence in failing to adequately train its sheriff's
19 deputies, including KLUGE and GARRETT, with regard to the aforementioned unlawful acts.

20 19. The Internal Affairs Unit of the SAN DIEGO COUNTY Sheriff's Department
21 conducted an internal investigation and determined that "no violations of Sheriff's Department
22 policies and procedures were found." Thus, it is the policy, custom or practice of the SAN DIEGO
23 COUNTY Sheriff's Department to act with deliberate indifference toward the 4th and 14th
24 Amendment rights of United States citizens and, more specifically, individuals investigated on a §
25 5150 charge, by: (a) allowing its deputies to unreasonably search and seize them, use excessive force
26 against them and deprive them of their liberty without due process; and (b) not requiring its deputies
27 to document or file incident reports concerning § 5150 investigations or detentions.
28

1 20. Had the SAN DIEGO COUNTY Sheriff's Department instituted affirmative
2 procedures designed to adequately train its deputies with regard to the 4th and 14th Amendment rights
3 of individuals being investigated pursuant to § 5150, PLAINTIFF's aforesaid injuries would have
4 been lessened or avoided.

5 21. As a direct and proximate result of the conduct of the defendants, and each of them,
6 PLAINTIFF was hurt and injured in health, strength and activity, sustaining injuries to his body and
7 shock and injuries to his nervous system and person, all of which said injuries caused PLAINTIFF
8 mental, physical, and nervous pain and suffering.

9 22. As a further direct and proximate result of the conduct of the defendants, and each of
10 them, PLAINTIFF suffered the loss of his freedom.

11 23. As a further direct and proximate result of the conduct of the defendants, and each of
12 them, PLAINTIFF suffered the loss of more than \$15,000 in Barona Player's Club benefits to which
13 he was entitled.

14 24. The conduct of defendants was purposely oppressive and was done knowingly,
15 willfully and with malicious intent, entitling PLAINTIFF to an award of punitive and exemplary
16 damages.

17
18
19 **SECOND CAUSE OF ACTION**

20 **CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS [42 U.S.C. § 1985]**

21 **(As To Defendants KLUGE, GARRETT & DOES 1-10)**

22
23 25. PLAINTIFF realleges and incorporates by reference, paragraphs 1 through 24,
24 inclusive, as though fully set forth herein.

25 26. Defendants KLUGE and GARRETT conspired with each other and with certain
26 Barona employees for the purpose of impeding, hindering, obstructing, or defeating PLAINTIFF's
27 due course of justice, with the intent to subvert PLAINTIFF's 4th and 14th Amendment rights and/or
28 to injure PLAINTIFF for lawfully attempting to enforce those constitutional rights.

1 27. After Deputy KLUGE determined not to have PLAINTIFF committed on a § 5150
2 hold, PLAINTIFF informed Barona employees that while he did not intend to gamble there anymore,
3 he decided not to voluntarily ban himself from the casino in order to preserve the substantial Barona
4 Player's Club benefits he had already earned (e.g., free daily buffets, bonus cash, etc.). Those benefits
5 were worth more than \$15,000.

6 28. Barona did not want to uphold its part of the contract it had entered into with
7 PLAINTIFF – which required it to provide PLAINTIFF with those player's club benefits he had
8 already earned – if PLAINTIFF was not going to continue gambling there. Certain Barona employees
9 then informed Deputies KLUGE and GARRETT that they were going to involuntarily ban
10 PLAINTIFF after he decided not to voluntarily ban himself, under the pretext of PLAINTIFF's
11 alleged "misconduct," in order to cheat PLAINTIFF out of the benefits he had already bargained for
12 and earned. Those Barona employees then entered into an agreement or understanding with Deputy
13 KLUGE to have him terrorize PLAINTIFF and forcibly remove PLAINTIFF from the premises in
14 order to coerce PLAINTIFF to give up his player's club rights and to make it appear as if he had
15 engaged in such unidentified misconduct in order to warrant his removal from the casino. To that
16 end, Deputies KLUGE and GARRETT did Barona's bidding, as set forth herein.

17 29. Barona made audio and videotapes of this incident which corroborated all of
18 PLAINTIFF's allegations and established that: (a) PLAINTIFF did not engage in any misconduct;
19 (b) certain Barona employees and defendants KLUGE and GARRETT sought to cheat PLAINTIFF
20 out of the aforementioned contractual benefits to which he was entitled and had already earned; and
21 (c) defendants KLUGE and GARRETT violated PLAINTIFF's 4th and 14th amendment rights, as
22 hereinabove set forth, in furtherance of their conspiracy with Barona.

23 30. Because of the incriminating and incendiary nature of the audio and videotapes,
24 defendants KLUGE and GARRETT, through their agreement(s) with Barona, conspired to obstruct
25 justice and have those tapes destroyed shortly after the incident. Defendants KLUGE and GARRETT
26 also conspired with each other to obstruct justice by not: (a) documenting the incident, (b) not
27 reporting the incident to their superiors; and (c) not filing an incident report with the SAN DIEGO
28 COUNTY Sheriff's Department. All of these actions were done to conceal defendants' liability.

1 31. As a direct and proximate result of the conduct of the defendants, and each of them,
2 PLAINTIFF was hurt and injured in health, strength and activity, sustaining injuries to his body and
3 shock and injuries to his nervous system and person, all of which said injuries caused PLAINTIFF
4 mental, physical, and nervous pain and suffering.

5 32. As a further direct and proximate result of the conduct of the defendants, and each of
6 them, PLAINTIFF suffered the loss of his freedom.

7 33. As a further direct and proximate result of the conduct of the defendants, and each of
8 them, PLAINTIFF suffered the loss of more than \$15,000 in Barona Player's Club benefits to which
9 he was entitled.

10 34. The conduct of defendants was purposely oppressive and was done knowingly,
11 willfully and with malicious intent, entitling PLAINTIFF to an award of punitive and exemplary
12 damages.

13
14 WHEREFORE, PLAINTIFF prays for judgment against defendants, and each of them,
15 as follows:

- 16 1. For general damages in an amount according to proof at trial;
17 2. For special damages in an amount according to proof at trial;
18 3. For punitive damages in an amount according to proof at trial;
19 4. For reasonable attorney's fees, costs and interest as authorized by law; and
20 5. For such other and further relief as the court deems just and proper.

21
22 DATED: August 8, 2008

PAUL BASHKIN

23
24 By 
25 Paul BASHKIN
26 In Propria Persona
27
28

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>BASHKIN, PAUL</u> (b) County of Residence of First Listed Plaintiff <u>San Diego</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <u>Pro Se</u>	DEFENDANTS <u>SAN DIEGO COUNTY</u> <u>ALICE, HOWARD; GARRETT</u> <u>00551-100</u> County of Residence of First Listed Defendant <u>San Diego</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, CITE SECTION OF THE LAND INVOLVED. Attorneys (If Known) <u>Unknown</u>
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width:100%;"> <tr> <td style="width:50%;"> Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 </td> <td style="width:50%;"> DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 4 </td> </tr> </table>	Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 4
Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 4		

IV. NATURE OF SUIT (Place an "X" in One Box Only)	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input checked="" type="checkbox"/> 440 Other Civil Rights
FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395n) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7619
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 910 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Sections 1983, 1985

Brief description of cause: 9th & 14th Amendment Violations

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS According to Pleadings CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 8/8/08 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CR